

Remarks/Arguments:

In response to the Final Office Action, the applicant offers the following remarks. Claims 1 through 12, and 14 through 16 are currently pending. Independent claims 1, 2, 9 and 16 have been substantively amended to address the previously cited and new prior art cited in the Office Action. Claim 13 has been cancelled without prejudice.

The Office Action rejected independent claim 1 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 4,380,160, issued to Hoffman.

Independent claims 2, 9 and 16 were rejected in the Office Action under 35 U.S.C. § 103(a) as being unpatentable over Hoffman, and/or U.S. Patent No. 3,736,016, issued to Garvey et al., U.S. Patent No. 6,463,769, issued to Garner, and/or U.S. Patent No. 1,473,001, issued to White, in combination with one or more secondary references.

Finally, the Office Action rejected dependent claims 3 through 8, and claims 10 through 15 under 35 U.S.C. § 103(a) as being unpatentable under the Hoffman, White, and/or Garvey et al. references in combination with one or more secondary references.

A. Claims 1 and 2 Recite Patentable Subject Matter

As amended, claim 1 recites:

A protective cover for use with a locking device, said protective cover comprising:

a channel shaped protective shroud sized to cover at least part of the locking device, said protective shroud having openings at two opposite ends of the shroud;

means to affix the protective shroud in place over the locking device; and

a single hasp element having a notch into which the locking device engages under the protective cover, such that upon locking the locking device to the single hasp element, the locking device can not be removed from the single hasp element unless the locking device is unlocked. (Emphasis added).

As amended, claim 2 recites:

A protective cover for use with a locking device, said protective cover comprising:

a channel shaped protective shroud sized to cover at least part of the locking device, said protective shroud having openings at two opposite ends of the shroud;

a plurality of anchors attached to the protective shroud;

means to affix the protective shroud in place over the locking device; and

a single hasp element having a notch into which the locking device engages under the protective cover, such that upon locking the locking device to the single hasp element, the locking device can not be removed from the single hasp element unless the locking device is unlocked. (Emphasis added).

Independent claims 9 and 16 have a similar limitation providing that the single hasp element has a notch cut within the hasp. The specific support for this limitation is shown at page 8, lines 28 through 32 noting that the "hasp end section 21 that extends through the access door 40 has a notch 25 or cut-out that is sized to allow for locking engagement of the locking device 30 with the hasp element 20;" and is also shown in detail in Figs. 3, 4 and 6. More specifically, as shown in Fig. 4, when in a locked position, the locking device 30 fits relatively closely around the hasp end section.

By contrast Hoffman discloses a trailer tow locking device for use with trailers that have a tow ring. While the Hoffman cover 58 protects the padlock 50, the design of the Hoffman tongue 30 allows the padlock 50 to have substantial movement even when in a locked configuration. The allowable movement and play of the Hoffman padlock appears to be the reason that Hoffman discloses holes 46 and 62 within tongue 30. Indeed, Hoffman would not be functional using a notch because the padlock 50 would simply fall away from the hasp even in a locked configuration. Applicant sees no suggestion or motivation in Hoffman to have the locking device tongue 30 with a notch as compared to the holes taught and disclosed.

Applicant also notes that the Garner hasp 36, and the Garvey et al. hasp plate 30 both also only disclose use of holes within the hasp element, and do not show a notch element. Similar to Hoffman, both the Garner and Garvey et al. designs allow the lock (40 for both Garner and Garvey et al.) to have substantial movement and "play" even when the lock is in a locked or closed configuration. There does not appear to be any suggestion or motivation in Garner or Garvey et al. to use a notch in the hasp element instead of a hole.

In all three of these references, Hoffman, Garner and Garvey et al., the hasp element has a hole (or more than one hole) provided therein so that the padlock is held in place and can not be removed from the hasp.

The advantages of the subject matter of independent claims 1, 2, 9 and 16 are not attained or suggested by the Hoffman, Garvey et al., and/or Garner references. This is because claims 1, 2, 9 and 16 contain features as described above that are not taught or suggested by the applied references. As explained by Judge Rich in *In re Civitello*, 144 USPQ 10, 12 (CCPA 1964), when a claimed feature is not disclosed by the reference, the reference cannot render the claim obvious:

Since Haslacher fails to disclose the feature of the claim relied on, we do not agree with the patent office that it would suggest modifying the Craig bag to contain the feature. The Patent Office finds the suggestion, only after making a modification which is not suggested, as we see it, by anything other than appellant's own disclosure. This is hindsight reconstruction. It does not establish obviousness. (Emphasis in original.)

Thus, Applicant does not agree with the Examiner that the Hoffman, Garvey et al., and/or Garner references, alone or in combination with other references support a prima facie case of anticipation or obviousness.

B. Dependent Claims

Because claims 3 through 8, and claims 10, 11, 12, 14, and 15 depend directly from a patentable claim, these dependent claims are also patentable. See, e.g., *In re McCarn*, 101 USPQ 411, 413 (CCPA 1954) ("sound law" requires allowance of dependent claims when their antecedent claims are allowed). Moreover, claims 3 through 8, and claims 10, 11, 12, 14, and 15 are each non-obvious in view of the applied references.

C. Drawings

Applicant respectfully notes that the reference numeral 18 refers to the disclosed "adhesive" as provided on page 7 of the original application specification, line 28 and line 31.

D. Specification

The Office Action also objects to an apparent failure to provide support for the "openings" as claimed in claims 1, 2, 9, and 16. Applicant respectfully notes that page 9 through page 10 of the original application specification provides that "[a]lthough the illustrations of the cover 10 shown in Figs. 1 through 6 show the cover having a channel or U shape, the cover may have alternate shapes, sizes or configurations. For example, the cover 10 may be shaped as a concave dome that is easily formed by bending stainless steel over a cylinder form." The disclosure that the cover 10 is a U shape, or channel shape, necessarily and inherently discloses and supports openings at either end of the cover 10. Moreover, as explicitly shown in at least Figs. 1, 2, 3, and 4, the cover 10 is shown in the channel or U shape having openings at either end of the cover 10.

E. Conclusion

By this Amendment, pending claims 1 through 12, and 14, 15, and 16 have been amended directly (or indirectly through an amendment to an independent claim) to place the application in better condition for examination and allowance. The rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) should be withdrawn. Favorable action is earnestly solicited. Finally, the Examiner is invited to call the applicant's undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicant respectfully requests the constructive assistance

and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



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